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10/579,167	02/08/2007	Robert Barrie Ainscow	007130.00010	8916
28827 7590 05/17/2011				
GABLE & GOTWALS				
100 WEST FIFTH STREET, 10TH FLOOR				
TULSA, OK 74103				
EXAMINER				
DOUYON, LORNA M				
ART UNIT		PAPER NUMBER		
1761				
NOTIFICATION DATE		DELIVERY MODE		
05/17/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@gablelaw.com

### Office Action Summary

**Application No.**

10/579,167

**Applicant(s)**

AINSCOW ET AL.

**Examiner**

Lorna M. Douyon

**Art Unit**

1761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-15 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15, 18, 19 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. This action is responsive to the amendment filed on February 24, 2011.
2. Claims 1-5, 7-15, 18-28 are pending. Claims 20-24 are withdrawn from consideration as being drawn to a nonelected invention. Claims 6, 16 and 17 are cancelled. Claims 1, 27 and 28 are currently amended.
3. The objections to claims 1 and 27 for minor informalities are withdrawn in view of Applicants' amendment.
4. The rejection of claim 28 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-3, 5, 8-10, 13, 15, 18-19, 27 and 28 stand rejected under 35 U.S.C. 102(b) as being anticipated by Schulz et al. (US Patent No. 5,008,031), hereinafter "Schulz" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz teaches an automatic domestic washing machine composition which comprises 12.0 wt% Na-alkylbenzene sulfonate (anionic surfactant, which reads on

emulsifier); 12.6 wt% fatty alcohol-ethoxylate (nonionic surfactant which also reads on emulsifier); 30.15 wt% tripolyphosphate (a builder); 5.0 wt% silicate (also a builder); 0.5 wt% methylcellulose/carboxymethylcellulose (reads on the gelling agent); 0.3 wt% optical brightener; 5.0 wt% paraffin oil; 0.8 Alkalase (enzyme); 25.0 wt% perborate tetrahydrate (bleach); 0.15 wt% dyestuff and 0.3 wt% fragrance (see Table 1 under col. 5). Preferably, sodium perborate tetrahydrate in combination with bleach activators come into consideration as bleaching components (see col. 4, lines 21-24). Sodium percarbonate is another suitable bleach (see col. 4, lines 16-17). The detergent is packed in doses in water soluble film bags (see col. 4, lines 59-63). Schulz teaches the limitations of the instant claims. Hence, Schulz anticipates the claims.

7. Claims 11 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz as applied to the above claims for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz teaches the features as described above. In addition, Schulz teaches that the paraffin hydrocarbons have 8 to 40 carbon atoms (see col. 1, lines 61-65). The cellulose ether is present in the composition in an amount up to about 0.5 by weight (see claim 1). Schulz, however, fails to specifically disclose a gelling agent (i.e., cellulose ether) in an amount between 1-10%, and the paraffin having 20-28 carbon atoms.

As the word "about" permits some tolerance (see *In re Ayers*, 69 USPQ 109, and *In re Erickson*, 145 USPQ 207), the upper limit of about 0.5% of Schulz may be considered to read on the lower limit of 1% of instant claim 11.

With respect to the number of carbon atoms in the paraffin oil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

8. Claims 1-5, 7-11, 13-15, 18-19, 25-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2002/0142930), hereinafter "Smith" for the

reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Smith teaches a unit dose of detergent product having one or more dishwashing compositions in liquid, gel, paste form, which are substantially anhydrous, and the unit dose includes sachet or pouches having single or multiple compartments (see paragraph [0012] on page 2). In one embodiment, the anhydrous dishwashing composition is in the form of a particulate bleach suspension in a non-aqueous liquid carrier (see paragraph [0016] on page 2). Particulate bleaches suitable for use include inorganic peroxides like percarbonates (see paragraph [0020] on page 2) and chlorine bleaches (see paragraph [0056-0057] on page 5). In preferred embodiments, the dishwashing composition included in the unit dose form comprises a deterative enzyme (see paragraph [0022] on page 3). Bleach precursors and bleach catalysts (i.e., bleach activators) are also added (see paragraph [0057] on page 6). The composition also contains low cloud point non-ionic surfactants (see paragraph [0058-0059] on page 6, in amounts like for example, 5.6 wt% or 4.6 wt% (see paragraph 0076 on page 7). Other suitable components include organic polymers (which read on gelling agents) in levels from about 0.1% to about 30% by weight of the composition (see paragraph [0067] on page 6). The composition can contain a corrosion inhibitor like paraffin in levels of from about 0.05% to about 10% by weight of the composition (see paragraph [0069] on page 6). Other suitable components include optical brighteners and perfumes 9see paragraph [0070] on page 7). Smith, however, fails to specifically disclose a unit dose single

compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in their optimum proportions because the teachings of Smith encompass these components and proportions thereof. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

9. Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz or Smith as applied to the above claims, and further in view of MacQueen et al. (US 6,268,466), hereinafter "MacQueen" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Schulz or Smith teaches the features as described above. Schulz or Smith, however, fails to disclose a tertiary amide terminated polyamide gelling agent.

MacQueen teaches a tertiary amide terminated polyamide gelling agent useful in formulating personal care products and other articles (see abstract) like household products such as household cleaners (see col. 11, lines 17-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Schulz or Smith with the tertiary amide terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

### ***Response to Arguments***

10. Applicants' arguments filed February 24, 2011 have been fully considered but they are not persuasive.

With respect to the anticipation rejection based upon Schulz, Applicants argue that no reference is made in Schulz that the 12.0 wt% Na-alkylbenzene sulfonate (anionic surfactant), nor the 12.6 wt% fatty alcohol-ethoxylate (nonionic surfactant) is used as an emulsifying agent to emulsify the mineral oil. Applicant also argues that no reference is made in this reference to the use of cellulose ethers as gelling agent.

The Examiner respectfully disagrees with the above arguments because even though Schulz does not explicitly disclose the use of the alkylbenzene sulfonate or fatty alcohol-ethoxylate as emulsifying agents and the use of cellulose ethers as gelling agents, the fact remains that alkylbenzene sulfonate and fatty alcohol-ethoxylate are surfactants (which read on claim 3) which are also known as emulsifiers and cellulose



ethers also act as gelling agents. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II. In addition, in response to applicants' argument that Schulz made no reference to the use of cellulose ethers as gelling agents, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicants also request the Examiner to provide evidence showing why a skilled person in the art would utilize the cellulose ethers in the Schulz et al patent for a gel in anhydrous system, as used in Applicants' invention.

The Inventive Example in Table 1 under col. 5 in Schulz is sufficient evidence of the use of methylcellulose/carboxymethylcellulose in an anhydrous system. Also, in col. 4, lines 50-55, Schulz teaches that the detergents have a viscosity in the range of 1,000 to 1,000,000 mPa.s. Further, in col. 4, lines 59-61, Schulz teaches that detergents having a viscosity of more than 10,000 mPa.s have a particular handling advantage if the detergent is packed in doses in water soluble film bags. Thus, it is evident from this teaching that the detergents of Schulz, which are packed in water soluble bags, are in the form of a gel.

Applicants also argue that Applicants' invention teaches the use of a low polarity mineral oil as the single component to act as a carrier, whereas in the Schulz et al patent, the use of mixed solvent is shown to be necessary in the laundry application, and therefore teaches away from Applicants' invention.

The Examiner respectfully disagrees with the above argument because the mid-to high-polarity liquids like esters, ethers, ketones of Schulz (see abstract), are not excluded from the "including" (i.e., "comprising") language of the present claims. Please note that the term "comprising" leaves the claim open for the inclusion of unspecified ingredients even in major amounts, see *Ex parte Davis et al.*, 80 USPQ 448 (PTO Ed. App. 1948). Also, the broad "comprising" and "containing" terminology do not exclude the presence of other ingredients in the composition, unlike the narrow "consisting of" language, see *Swain v. Crittendon*, 332 F.2d 820, 14 1 USPQ 8 11 (CCPA 1964).

With respect to the obviousness rejection of claims 11 and 14 based upon Schulz, Applicants rebut the *prima facie* case of obviousness because Applicants' invention shows unexpected results.

The Examiner has carefully considered the specification for the alleged unexpected results, however, the specification only contains a single example on page 11 and has not shown comparisons to any prior art compositions so as to arrive at a conclusion that Applicants' invention provides unexpected results.

With respect to the obviousness rejection based upon Smith, Applicants also argue that Applicants' invention provides unexpected results.

As stated above, the Examiner has carefully considered the specification for the alleged unexpected results, however, the specification only contains a single example on page 11 and has not shown comparisons to any prior art compositions so as to arrive at a conclusion that Applicants' invention provides unexpected results.

Applicants also argue that the anti-redeposition polymers listed in Smith at paragraph 0067 would not behave as gelling agents in the presence of mineral oil, as used by Applicants' invention. Applicants also argue that the paraffin oil in Smith is used as a corrosion inhibitor.

The Examiner respectfully disagrees with the above argument because even though Smith teaches the organic polymers as anti-redeposition and soil release agents and not as gelling agents, please note that the range of proportions (i.e., about 0.1% to about 30% by weight of organic polymers, see paragraph [0067] overlap those recited, hence, said organic polymers would behave similarly as those recited. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II. In addition, even though the paraffin oil is used as a corrosion inhibitor, not as a carrier agent, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393.

With respect to the rejection of claim 12 based upon Schulz or Smith in view of MacQueen, Applicants argue that claim 12 depends from claim 1, and, as such it contains all of the limitations of claim 1, and therefore, no possible substitution is found in the cited references that could yield predictable results that would lead to the gelling agent as claimed in Applicants' invention.

The above responses to Schulz or Smith apply here as well. Hence, the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1761

